UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/PER/98/4
17 March 1999

ENGLISH
Original: SPANISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1998

Addendum

PERU*

[1 July 1998]

CONTENTS

	Paragraphs	Page
Introduction	1	3
Article 1	2 - 6	3
Article 2	7 - 21	4
Article 3	22 - 53	7
Article 4	54 - 59	13
Article 5	60	15
Article 6	61 - 72	15

* In accordance with a decision of the Human Rights Committee, reports will henceforth be given simplified document symbols, showing the abbreviation for the State party, the year of submission and the number of the report.

CONTENTS (continued)

	Paragraphs	Page
Article 7	73 - 81	17
Article 8	82 - 87	20
Article 9	88 - 97	21
Article 10	98 - 119	23
Article 11	120 - 124	27
Article 12	125 - 128	27
Article 13	129 - 137	28
Article 14	138 - 160	29
Article 15	161 - 166	33
Article 16	167 - 169	33
Article 17	170 - 173	34
Article 18	174 - 176	35
Article 19	177 - 179	35
Article 20	180 - 181	36
Article 21	182 - 184	36
Article 22	185 - 189	37
Article 23	190 - 198	39
Article 24	199 - 202	39
Article 25	203 - 208	40
Article 26	209 - 212	40
Article 27	213 - 216	

Introduction

1. Peru, in compliance with the provisions of article 40 of the International Covenant on Civil and Political Rights, submits herewith the fourth periodic report on human rights to the Human Rights Committee. This report concentrates mainly on the actual application of the legislation governing these rights, as regards both the observance and the effective enjoyment of the rights set forth in the Covenant, and on the achievements and the difficulties encountered in complying with the Covenant.

Information on articles 1 to 27 of the Covenant

Article 1

2. The first paragraph of this article establishes the right of all peoples to self-determination. By virtue of this right, each nation is entitled to decide freely on its political and economic status or regime, and accordingly to establish the form of government appropriate to its aims.

3. As laid down in the Constitution of 1993, Peru is a democratic, social, independent and sovereign Republic. The State is one and indivisible. Its Government is unitary, representative and decentralized and is organized according to the principle of separation of powers. This means that the country is governed by a representative elected by the citizens and that its Government accepts the principle of decentralization, eschewing the centralization of power in a single geographical location and accepting the form of governmental organization that has been adopted by all the democratic systems of the world and is characterized by the separation of powers, executive, legislative and judicial, each fully independent of the others.

4. All these considerations enable the Peruvian State to draw up the framework of its national life in a free and sovereign manner. It is appropriate to draw attention to the expressions of the exercise of that free determination. In its governmental organization, Peru enjoys acceptance by, and participation in, the international community and is a member of such major international organizations as the United Nations and the Organization of American States.

5. Article 1, paragraph 2, of the Covenant provides that every State party may freely dispose of its natural wealth and resources without prejudice to any obligations arising out of international economic cooperation. It should be pointed out that these principles are set forth in the 1993 Constitution, Chapter II: "Concerning the environment and natural resources", which forms parts of Title III: "Concerning the economic system". Article 66 of the Constitution affirms that the State exercises sovereignty over the supply of natural resources - renewable and non-renewable, which are regarded as the patrimony of the nation. Moreover, article 67 declares that the State promotes the sustainable use of its natural resources.

6. This right of States is relevant to the outstanding financial obligations of a State towards other States and/or international institutions, obligations that must be based on the principle of mutual benefit, which is one of the pillars of international law. This implies that the State is free

to decide on the amount of, and the method of meeting, such obligations. In its turn, however, the Covenant guarantees that a people may not be deprived of its own means of subsistence. In other words, meeting State obligations cannot be given precedence over assets that are essential for the subsistence of the people. Accordingly, the Peruvian Government allocates a proportion of its revenue to social support and compensation programmes, and a proportion to the fulfilment of its international commitments. In any event, fulfilment of these international obligations has led to a considerable influx of capital, promoting the sustained development of society.

Article 2

7. With regard to the paragraph concerning discrimination, the Peruvian Government makes a point of ensuring that no national or local public authority or institution promotes or incites discrimination in any form, and it is the will of the State to protect persons who are within its borders and are therefore subject to its jurisdiction, without any form of discrimination.

8. Peru's legislation on discrimination is based on the 1993 Constitution. Article 2 (2) states that "Every person has the right: ... to equality before the law. No one shall suffer discrimination on account of origin, race, sex, language, religion, opinion, property or for any other reason". Likewise, article 26 states that "In labour relations the following principles are observed: 1. Equality of opportunity without discrimination". This constitutional precept is reflected in various substantive, procedural and administrative provisions.

9. Article V of the Code of Penal Enforcement, concerning rights retained by the prisoner, states: "The prison regime shall respect the rights of the prisoner that are not affected by the sentence. Any discrimination on racial, social, political, religious, economic, cultural or any other grounds is prohibited".

10. Article VI of the single consolidated text of the Code of Civil Procedure establishes the principle of social equality in proceedings, whereby "The judge shall ensure that any inequality between persons for reasons of sex, race, religion, language or social, political or financial status does not affect the course or outcome of the trial".

11. The Code on Children and Adolescents states in article IV of the Preliminary Title concerning the general scope of application: "This Code applies to all children and adolescents living on Peruvian territory, without any distinction on account of race, colour, sex, language, religion, political opinion, nationality, social origin, property, ethnic group, physical or mental disability or any other condition pertaining to themselves or their parents or guardians".

12. Article IX of the same Preliminary Title concerning proceedings as a human problem, stipulates: "The State guarantees a system of administration of specialized justice whereby children or adolescents shall be treated as human problems. In the case of children or adolescents belonging to ethnic groups or native or indigenous communities, the court shall take into account not only the principles set forth in this Code but also their practices and

customs and, so far as possible, shall consult with the authorities of the community to which they belong". Furthermore, article XV of the Code, concerning basic education, stipulates: "The State shall ensure that basic education comprises: ... (d) respect for their parents, their own cultural identity, their language, the values of the nation and their peoples, and cultures different from their own; (e) preparation for a responsible life within a free society, in a spirit of solidarity, understanding, peace, tolerance, equality between the sexes, friendship between peoples and ethnic, national and religious groups".

13. Article 1 of the single consolidated text of the Employment Promotion Act (D.S. 05-95-TR/D.Leg. No. 728) states: "The national employment policy is a set of regulatory instruments designed, in accordance with articles 42, 48 and 130 of the Constitution, to promote a system of equal employment opportunities that will provide all persons with access to a useful occupation that protects them against all forms of unemployment and underemployment". Article 62 of the same Act stipulates: "Dismissal for the following reasons shall be null and void: ... (d) discrimination on account of sex, race, religion, opinion or language". Similarly, article 63 states: "Hostile acts comparable to dismissal are ... (f) Acts of discrimination on account of sex, race, religion, opinion or language".

14. Act No. 26,772 stipulates: "Offers of employment and access to educational facilities may not contain requirements that constitute discrimination or the cancellation or impairment of equality of opportunities or treatment". On 4 February of this year, the Ministry of Labour and Social Advancement (MTPS) initiated the implementation of the anti-discrimination legislation concerning requirements for staff and access to technical or occupational training facilities. Complaints against discrimination in access to employment or education should be submitted by means of a petition to the Director of Employment and Occupational Training in the area where the incident occurs; the said petition should contain a statement of the facts and the name of the person accused, with the addition of evidence - precise material or documentary evidence of the act complained of - and a photocopy of the identity document. The above material should be delivered to the Documentary Procedure Office of the Ministry or its regional headquarters.

15. The regulations issued recently specify that employers who hire staff, educational facilities, employment agencies and others acting as intermediaries in offers of employment will be punished if they infringe the legislation in force. The punishment will be one taxation unit (UIT), rising to five UITs if the offence is repeated.

16. Article 24 of the Framework Law on the Civil Service and Remuneration (D.Leg. No. 276) states: "Career public servants have the right to: (a) pursue a civil service career on the basis of merit, without political, religious, economic, racial or sex discrimination or discrimination of any other kind". Article 99 of the Civil Service Regulations approved by D.S. No. 005-90-PCM states: "The civil servant has the right to advancement in the civil service on the basis of his or her occupational qualifications, and shall not be the subject of any kind of discrimination".

17. Article 68 of the General Rules for the Private Pension Fund System and the Regulations on Organization and Functions, approved by decision No. 006-93-EF/SAFP, stipulates: "The operational procedure for collecting provisional contributions from the members of the private pension fund system shall be carried out by banks or finance companies operating in Peru or by the pension fund's own branch offices." If the contributions are collected by banks or finance companies on behalf of the pension fund, the latter and the collection company must sign the corresponding agreement and send a copy thereof to the Supervisory Board within three days of its signature. Such agreements must specify the conditions and time limits for their implementation and must contain at least the following provisions: "... (h) the obligation, when carrying out their collection tasks, to avoid preferential treatment and, in general, any kind of discrimination that might benefit some members or employers to the detriment of others".

18. Article 5 of the General Act on Cooperatives approved by Legislative Decree No. 085 stipulates that: "Every cooperative has the duty to: ... 2. Comply with the following basic regulations: 2.2 Recognize the equality of rights and obligations of all members, without any discrimination".

19. Article 3 of the Advertising Regulations for the Protection of the Consumer, approved by Legislative Decree No. 691, stipulates: "Advertisements shall respect the Constitution and the laws. No advertisement may encourage or stimulate any type of racial, sexual, political or religious discrimination or offence. Advertisements shall not contain anything that may be conducive to anti-social, criminal or illegal activities or that would appear to support, extol or encourage such activities".

20. With regard to article 2, paragraph 2, of the Covenant, article 200 of the Constitution recognizes the safeguards that apply when constitutional rights are infringed or threatened by actions or by the omission of compulsory acts, and there is the possibility of resorting to international courts, as provided for by article 205.

21. The constitutional safeguards recognized are:

(a) The remedy of habeas corpus, which is applicable in the event of an action or omission, by any authority, official or person, that infringes or threatens personal freedom or associated constitutional rights;

(b) The remedy of <u>amparo</u>, which is applicable in the event of an action or omission, by any authority, official or person, that infringes or threatens the other rights recognized by the Constitution. It is not applicable in respect of legal regulations or judicial decisions handed down in ordinary proceedings. Accordingly, the purpose of the Habeas Corpus and Remedy of <u>Amparo</u> Act (No. 23,506), promulgated on 7 December 1982, is to restore matters to the situation that obtained prior to the infringement or threat of infringement of a constitutional right. These remedies may be exercised in cases where constitutional rights are infringed or threatened by actions or by the omission of compulsory acts. Act No. 25,398, supplementing the provisions of Act No. 23,506, was promulgated on 5 February 1992;

(c) The remedy of habeas data, which is applicable in the event of an action or omission, by an authority, official or person, that infringes or threatens the rights referred to in article 2, paragraphs 5 and 6, of the Constitution. Article 2 (5) refers to the fact that every person has the right: "To request information required without explaining the reason and to receive it from any public body, within the time limit established by law, meeting the cost incurred by this request. This right does not cover information that affects personal privacy or information specifically excluded by law or for reasons of national security ...". Article 2 (6) of the Constitution stipulates that every person has the right to non-disclosure by "the information services, whether computerized or not, public or private, [of] ... information that affects personal or family privacy". It is necessary to point out, in accordance with the provisions of the penultimate paragraph of article 200 of the Constitution, that the exercise of the remedies of habeas corpus and amparo is not suspended while the states of emergency referred to in article 137 are in force;

(d) The remedy of unconstitutionality, which is applicable in respect of regulations that have the status of law: acts, legislative decrees, emergency decrees, treaties, Congressional regulations, regional regulations of a general nature and municipal ordinances that may contravene the Constitution in form or substance;

(e) Public right of action, which is applicable in the event of infringement of the Constitution and the law, against regulations, administrative orders and decisions and decrees of a general nature, whatever the authority by which they are issued;

(f) The remedy of enforcement, which is applicable in the case of failure by any authority or official to comply with a legal provision or perform an administrative act, without prejudice to statutory liabilities.

Article 3

22. The purpose of this article is to protect women against discriminatory treatment based on their condition as women and to establish their right to enjoy all the rights set forth in the Covenant on terms of equality with men. This principle of equality is one of the social rights of the individual. It presupposes that every individual shares the same conditions and qualities that make up the human being. Equality before the law establishes a basic equality of rights, a principle that is enshrined in article 2 (2) of the 1993 Constitution, the article which recognizes the right of every person to equality before the law. It states that no one may be discriminated against on account of origin, race, sex, language, religion, opinion, property or any other consideration.

23. The article under discussion should be seen in conjunction with article 103 of the Constitution, the first part of which states: "Special laws may be enacted because they are required by the nature of things, but not because of the differences between persons".

24. Another important provision is article 4 of the Constitution, which stipulates that the community and the State shall provide special protection

for children, adolescents, mothers and elderly people left on their own. The policies concerning equality between men and women are designed to achieve recognition of the dignity of the person, under conditions of freedom and equality and with the right to social organization and participation.

25. With regard to the equality of labour rights, article 22 of the Constitution states: "Work is a duty and a right. It is the basis of social well-being and a means of fulfilment of the individual". Work is the basis of social well-being because it is through work that society can obtain what it needs to live and to progress. A people that does not work will not survive even in the most basic aspects of life.

26. By work we understand organized physical or intellectual activity for the production of goods and services, which constitutes a right of the individual. This is in keeping with article 2 (15) of the Constitution, which stipulates: "Every person has the right ... to work freely, subject to the law". In addition, article 23 of the Constitution reads: "Work in its diverse forms is the subject of priority attention by the State, which provides special protection for mothers, minors and disabled persons who work". It is clear from this article that the State pays priority attention to work and affords special protection for mothers, minors and disabled persons who work. The State also issues legislative provisions of diverse rank, establishing the guidelines governing the labour relationship between worker and employer.

27. Also according to article 23, it is the duty of the State to promote conditions for social and economic progress by means of employment policies. Two components of such policies are: promotion of productive employment, by creating jobs that lead to the production of new wealth; and training of workers to become more skilled in their discipline and acquire specialized knowledge. By this article the State is assigned responsibility for the creation of conditions conducive to progress, especially by means of development policies. Article 26 of the Constitution states: "In labour relations the following principles must be observed:

(a) Equality of opportunity without discrimination;

(b) Irrevocable nature of the rights recognized by the Constitution and the law; and

(c) Interpretation favourable to the worker in the event of insuperable doubt as to the meaning of a provision."

The labour relationship is a legal relationship within which daily work takes place and the worker is subordinate to the employer. Respect for equal opportunities without discrimination means that, under equal conditions, all persons must have an equal possibility to advance within that work. Clearly, this paragraph is linked to the principle of non-discrimination of persons set forth in article 2 (2) of the Constitution.

28. The Civil Code of 1984 currently in force has eliminated a number of provisions that amounted to discriminatory treatment of women, contained in

the Civil Code of 1936, which was in force until 30 November 1984. Details of these provisions were given in the third periodic report on the Covenant (CCPR/C/83/Add.1).

29. Women are the subject of various forms of violence, the most important of which is gender violence throughout the life cycle, followed by sexual and family violence. Violence against women concerns all strata of society, without distinction as to socio-economic status or educational level. Within the couple, violence towards the woman includes physical, psychological and sexual attacks, enforced motherhood, confinement to the home, prohibition on working or taking part in recreational, community or political activities, persecution, expulsion from the home, etc.

30. Accordingly the Protection against Family Violence Act (No. 26,260) was approved; it contains the legislation on the policy of State and society towards family violence. This Act was imprecise in respect of a number of points, and these have now been clarified by Act No. 26,763, published on 25 March 1997, which amended articles 2, 3 (a), (d), (f) and (h), 4, 5, 7, 9, 10, 12 and 14 of the former Act. The scope of protection is thus more clearly defined in law.

31. For example, article 2 of Act No. 26,260 stipulated: "Manifestations of family violence are acts of physical or psychological ill-treatment between spouses, persons living together or persons who have produced children together although they do not live together, and by parents or guardians against young children under their responsibility". This has now been amended as follows: "Family violence shall be understood to mean any action or omission that may cause physical or psychological harm, ill-treatment without injury, including severe threats or coercion, which occurs between spouses, persons living together, relatives in the ascending or descending line, collateral relatives to the fourth degree by blood and the second degree by marriage, or persons living in the same home, provided that no contractual or employment relationships are involved".

32. With regard to the amendments to article 3 (a) of Act No. 26,260, the original text stipulated that the unconditional respect for the dignity of the human person and the rights of women and minors should be strengthened. The amended text refers to the duty of unconditional respect for the dignity of the human person and for the rights of women, children, adolescents and the family.

33. Article 3 (d) formerly read: "To establish effective legal mechanisms for the victims of family violence, by means of procedures characterized by a minimum of bureaucracy and by readiness to take preventive measures". This has been amended as follows: "To establish effective legal procedures for the victims of family violence, characterized by a minimum of bureaucracy and by readiness to take preventive measures and award compensation for the harm and damage caused, and for providing free care in connection with medical examinations required by the police, the Public Prosecutor's Office or the courts".

34. Article 3 (f) used to read: "To set up police units for women in the parts of the country where this is justified and strengthen existing police

stations with personnel specializing in cases of family violence". This has been amended as follows: "To strengthen existing police stations with specialized units staffed by personnel trained to deal with cases of family violence. The National Police shall ensure that the curricula for police training and on-the-job training include comprehensive training on family violence and dealing with it properly".

35. Article 3 (h) originally read: "To train police personnel and prosecutors and magistrates of the Republic to assume an effective role in the control of family violence". This has been amended as follows: "To train police personnel, prosecutors, judges, forensic physicians, health workers, education workers and the personnel of municipal offices of the Ombudsman to assume an effective role in the control of family violence. The actions provided for in this article shall be coordinated by the Ministry for the Advancement of Women and Human Development".

36. With regard to jurisdiction, article 4 of Act No. 26,260 stated: "The following are called upon to intervene in the event of acts of family violence: the National Police, the Office of the Public Prosecutor and the judiciary". This has been amended as follows: "The municipal offices of the Ombudsman for the protection of children and adolescents may, in carrying out their functions, hold conciliation hearings in an attempt to settle disputes arising out of family violence".

37. Article 5 of the Act stated that: "The National Police, through its units for women or minors, and in any event through specialized staff, is the agency normally competent to receive complaints and conduct the corresponding preliminary investigations". This has been amended as follows: "The National Police shall, at all police stations, receive any complaints of family violence and conduct the corresponding preliminary investigations. Complaints may be submitted in verbal or written form".

38. The police investigation is conducted officially, independently of the action of the complainant, and concludes with a report or statement containing the results of the investigation. During the investigation, the reports needed for clarifying the facts may be requested; the National Police shall at the request of the victim, provide the necessary guarantees for his safety; in the case of an offence that is in the process of being committed, or if there is very serious danger of an offence being committed, the National Police are authorized to search the home of the assailant; in the case of an offence in the process of being committed, they may arrest the assailant and conduct the investigation within a maximum period of 24 hours, bringing the statement to the knowledge of the appropriate provincial criminal prosecutor's office. Similarly, an accused person who is unwilling to go to the police station may be taken there, unresistingly or by force.

39. The police report will be transmitted to the magistrate or provincial criminal prosecutor, as appropriate, and to the prosecutor for family affairs, so that they can exercise the powers described in this Act. The interested party may also request a copy of the statement for such purposes as he or she may deem appropriate and request its transmission to any court hearing a case on the subject or related to the subject.

40. Article 7 of Act No. 26,260 specified that: "The Office of the Public Prosecutor, through the appropriate provincial civil prosecutor, shall intercede by constantly seeking to reconcile the couples and other family members in dispute and may take appropriate precautionary measures". This has been amended as follows: "The provincial prosecutor competent for family affairs shall handle applications lodged directly, whether verbally or in writing, by the victim of violence, his or her family members, any of the persons referred to in article 2 of this Act or, in the case of minors, any person who is in possession of the facts."

41. Act No. 26,763 also provides for urgent measures of protection which may be adopted at the request of the victim, including, and this list is not exhaustive, removal of the assailant from the home, prevention of harassment of the victim, temporary suspension of visits, an inventory of the victim's property and other urgent measures to safeguard the physical, mental and moral integrity of the victim.

42. The victim and the assailant will also be summoned to a conciliation hearing in order to seek a solution that would put an end to the acts of violence. If reconciliation is not achieved, or if it breaks down, the prosecutor shall make an application to the court for family affairs.

43. According to article 9 of Act No. 26,260, cases could be heard by the appropriate civil court of the place of residence of the complainant, or of the assailant, or of the most recent domicile of the couple, or of the place of the attack, without distinction. The proceedings should be as brief as possible and the court was authorized to order the most appropriate measures for restoring the peace and eliminating all kinds of violence: it could order temporary suspension of cohabitation and of all types of visits to the injured party. This article has been amended and now stipulates that cases are heard by the specialist family court of the place where the victim is domiciled or of the place of the attack, without distinction. Proceedings are initiated at the request of the victim of violence or his or her representative and the prosecutor for family affairs, and the matter is treated as a single action.

44. The judicial decision that terminates the proceedings will determine whether or not family violence has taken place and will lay down the protection measures for the victim. It may order, inter alia, temporary suspension of cohabitation, temporary banning of the assailant from the home, temporary prohibition of any kind of visit by the assailant and of any other form of harassment of the victim, the treatment that the victim, the family and the assailant should receive, compensation for injury and establishment of a maintenance allowance for the victim.

45. Article 10 of Act No. 26,260 stipulated that those authorized to request protection for victims of family violence were the victims themselves, either parent of an ill-treated minor, blood relatives of the victim, the Office of the Public Prosecutor or any person aware of such acts of aggression. These provisions have been amended as follows: "If in the respective proceedings the criminal court adopts precautionary measures to protect the victim, it will not be admissible to request such measures in the civil courts. However, civil protection measures may be requested prior to the initiation of the proceedings, as precautionary measures separate from the proceedings."

46. Article 12 of Act No. 26,260 stipulated: "The intervention of the juvenile court is subject to the provisions contained in the Code on Children and Adolescents." This has now been modified to read: "When a criminal judge or a professional judge tries offences or misdeeds arising out of acts of family violence, he is authorized to adopt all the protective measures set out in the present Act. The measures referred to in this paragraph may be adopted as from the initiation of the proceedings, during the trial, and on delivering judgement, the provisions of the Code of Civil Procedure being applied wherever relevant. They may also be imposed as restrictions on behaviour at the time when the accused is ordered to appear and on delivering judgement, and notice may be given that arrest will be ordered in the event of non-compliance."

47. Article 14 of Act No. 26,260 stipulated: "The courts may seek the collaboration of all public or private organizations or bodies concerned with the protection of minors, women and the family, with a view to providing assistance for the persons affected by the acts complained of and helping in the implementation and supervision of the precautionary measures provided for by the law." This has been amended as follows: "The National Police, the Office of the Public Prosecutor and the judiciary may seek the collaboration of all public or private institutions: for the physical and psychological assessment of victims of violence, assailants and members of their families; for assistance to victims of violence and their families; and for the implementation and supervision of the measures provided for by this Act. Certificates issued by State health establishments have full validity as evidence in proceedings concerning family violence, and such certificates are issued free of charge. The same validity applies to certificates issued by private institutions with which the Office of the Public Prosecutor and the judiciary enter into agreements for the performance of specified expert examinations."

48. Furthermore, there are a number of institutional mechanisms in Peru for the protection of women's rights, which also promote the social and economic development of women and girls. They work in coordination with the State in order to contribute to the formulation of public policies for stimulating the comprehensive and sustainable development of women and girls.

49. The Congressional Commission on Women, Human Development and Sport was established by unanimous agreement in September 1995 and began work in 1996. This Commission, which is an important body for debate, the development of ideas and creating awareness among members of parliament, is currently the largest and one of the most active in Congress. It is made up of 18 persons, men and women of all political leanings and from all disciplines. It proposes and disseminates draft legislation for protecting and recognizing the rights of women, identifies and proposes the repeal of legislation prejudicial to women, and reports cases of discrimination and violence against women. At present it also provides expert opinions.

50. The Office of the Ombudsman Specializing in Women's Rights was set up within the Ombudsman's Office in October 1996 as a body for the protection of women's rights. The Office concentrates on matters related to violence against women. Consequently, it makes a significant contribution to the

analysis and collation of information on the specific cases reported, and helps to strengthen the legal instruments for improving the quality of life of women and their access to public and private services.

51. The highest body that has been created is the Ministry for Advancement of Women and Human Development (PROMUDEH), established by Legislative Decree No. 866 of 29 October 1996. This reflects the priority given to the target population, which is among the most vulnerable groups in the country: women. The Ministry sets out to strengthen the role of women and the family in society by means of policies that will lead to the conduct of programmes and projects aimed at social development and the eradication of extreme poverty. All these projects incorporate the gender prospective, with the aim of promoting greater participation by women in the political, social, legal, economic and cultural spheres, in other words, promoting a full civic life with equity for men and women.

52. The creation of this Ministry is consistent with the implementation of the Beijing Platform for Action, a commitment undertaken by Peru at the Fourth World Conference on Women held in Beijing in 1995. It was agreed at this Conference to promote the creation of high-level bodies within States in order to provide leadership in the formulation and development of policies to encourage equality of opportunities among men and women. Through this new Ministry, the Peruvian State has incorporated the focus on gender, family violence and comprehensive health as one of the components of its strategic plan. This integrated approach, cutting across the entire sector, will lead to the development of policies and programmes directed at genuinely equitable treatment free from discrimination for women and men within the framework of a development process designed to improve the quality of life of both.

53. The National Population Policy Act promotes the strengthening of the family as the basic unit of society, by encouraging policies that allow persons and couples to make a free, informed and responsible choice concerning the number and spacing of births. For this purpose it provides for educational and health services, as a contribution to family stability and solidarity and to the improvement of the quality of life. The upbringing of children and their integration into society should be shared, with equal treatment of the sexes, so as to guarantee harmony, stability and solidarity among all members of the family. Family housework should be given a higher status, as a contribution to the national economy, and should be shared between men and women.

Article 4

54. Article 137 of the Constitution on states of exception, stipulates that the President of the Republic may, in agreement with the Council of Ministers, for a specific period, throughout the country or in part of it, and reporting to Congress or its Standing Committee, decree the following states of exception.

State of emergency

55. In the event of a disturbance of the peace or the internal order, a catastrophe or grave circumstances affecting the life of the nation. In this

eventuality, the exercise of the constitutional rights to personal freedom and security, to inviolability of the home, and to freedom of assembly and movement within the country may be restricted or suspended. The state of emergency may not exceed 60 days. Its extension requires a new decree. In a state of emergency, the armed forces are responsible for internal order if so decided by the President of the Republic.

State of siege

56. In the event of an invasion or civil war, or if there is an imminent risk that such may occur, with reference to those fundamental rights whose exercise is not restricted or suspended. The state of siege may not exceed 45 days. After a state of siege is decreed, Congress meets as a matter of right. Any extension of the state of siege requires the approval of Congress.

57. It is a socio-political fact of life that extremely grave and exceptional situations can arise and threaten the continued existence of the State and of society. Because they are exceptional, these situations must be governed by the Constitution by means of specific provisions, which are not the same as those applied in normal situations. In exceptional situations, the Government has more sweeping powers and can order the suspension or restriction of certain fundamental rights of citizens.

58. The Constitution governs states of exception in order to ensure not only that the crisis will be overcome, but also that there will be a return to constitutional normality in the long term. It therefore provides for prompt, efficient and extreme measures; were it not to do so, constitutional law and society itself would be in imminent danger of demise. Certain constitutional rights can therefore be suspended or restricted in order to facilitate a return to constitutional normality.

59. In accordance with Supreme Decrees Nos. 62, 63, 64, 67 and 68 DE/CCFFAA, published in the official gazette El Peruano in November and December 1997, and declaring the places listed in the chart below to be under a state of emergency, 15.77 per cent of the national territory is under a state of emergency, and 84.23 per cent is governed by the rule of law.

Areas of the country under a state of emergency

Department	Area covered	Date of the decree	Expiry date	Document
Lima	Ate district, Los Olivos, San Juan de Lurigancho, San Juan de Miraflores, San Luis, San Martin de Porres, Villa el Salvador and Villa María del Triunfo in Lima Province	13 Dec. 1997	10 Feb. 1998	DS 67 DE/CCFFAA of 6 Dec. 1997
Pasco	Oxapampa Province	30 Nov. 1997	28 Jan. 1998	DS 63 DE/CCFFAA of 25 Nov. 1997
Junin	Satipo and Chanchamayo Provinces	30 Nov. 1997	28 Jan. 1998	DS 63 DE/CCFFAA of 25 Nov. 1997

Department	Area covered	Date of the decree	Expiry date	Document
Huancavelica	Huancavelica Province, Castrovirreyna and Huaytara	30 Nov. 1997	28 Jan. 1998	DS 63 DE/CCFFAA of 25 Nov. 1997
Ayacucho	Huamanga Province, Cangallo and La Mar	30 Nov. 1997	28 Jan. 1998	DS 63 DE/CCFFAA of 25 Nov. 1997
Cuzco	Quimbiri District and Pichari in Convención Province	30 Nov. 1997	28 Jan. 1998	DS 63 DE/CCFFAA of 25 Nov. 1997
Apurimac	Chincheros Province	30 Nov. 1997	28 Jan. 1998	DS 62 DE/CCFFAA of 25 Nov. 1997
Huanuco	All provinces (except Puerto Inca, Yarowilca, Dos de Mayo and Huacrachucco District in Marañon Province)	30 Nov. 1997	28 Jan. 1998	DS 64 DE/CCFFAA of 25 Nov. 1997
Huanuco	Puerto Inca Province	26 Dec. 1997	28 Feb. 1998	DS 68 DE/CCFFAA of 19 Dec. 1997
San Martín	All provinces	30 Nov. 1997	28 Jan. 1998	DS 64 DE/CCFFAA of 25 Nov. 1997
Loreto	Yurimaguas District in Alto Amazonas Province	30 Nov. 1997	28 Jan. 1998	DS 64 DE/CCFFAA of 25 Nov. 1997
Ucayali	Coronel Portillo Padre Abad Province	26 Dec. 1997	23 Feb. 1998	DS 68 DE/CCFFAA of 19 Dec. 1997

Article 5

60. Peruvian legislation contains no rule of positive law under which it is possible to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for in the Covenant.

Article 6

61. In connection with article 6 (1) of the Covenant, article 2 of the Constitution stipulates: "Every person has the right: (1) To life, an identity, moral, mental and physical integrity and free development and well-being. The unborn child is a subject of law in all matters favourable to it". The right to life is the most central of all values. It is the basic assumption on which the existence of a minimum order in society is grounded. The right to life is inherent in the human being. It is fully guaranteed by the law.

62. By the same token, article 1 of the 1984 Civil Code stipulates: "The human being is a subject of law from birth onwards. Human life starts at conception. The unborn child is a subject of law in all matters favourable to it. The attribution of patrimonial rights is conditional on his live birth".

Article 5 of the Code states: "The right to life, physical integrity, freedom and honour and other rights inherent in the human being cannot be renounced and cannot be ceded to another person".

63. With regard to article 6 (2) of the Covenant, article 140 of the Constitution provides that the death sentence may only be imposed for acts of treason in wartime and for acts of terrorism, in accordance with the laws and treaties to which Peru is a party. The Universal Declaration of Human Rights is a commitment among nations to promote fundamental rights as the basis for liberty, justice and peace. The death penalty cannot be considered separately from these principles, because the right to life is the foundation for the achievement of all the rights laid down in the Universal Declaration. The human being enjoys the right to life above and beyond any considerations of race, nationality, sex, language, religion or borders. The right to life is enshrined in the main international legal instruments and in the national legislation of countries, and the death penalty constitutes a restriction thereof.

64. Peru is party to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights, all of which provide for the abolition of the death penalty, or in any event, its restriction to exceptional offences.

65. Both the Covenant and the American Convention limit the imposition of the death penalty to "the most serious crimes". While it is true that the international treaties do not define which crimes are to be considered most serious, any such definition must take account of the nature and gravity of the economic and social problems affecting each country. There can be no doubt, however, that a wide range of crimes would be incompatible with the concept of "serious crimes".

66. As mentioned above, Peruvian legislation authorizes capital punishment only for acts of treason in wartime and for acts of terrorism. It is therefore in line with current thinking that it is a transgression of the human condition to enact legislation that permits the taking of lives for other than exceptional reasons. Article 140 of the Constitution has not, however, been the object of any implementing legislation, so that in practical terms Peru does not use the death penalty.

67. Moreover, the legislation specifically governing terrorism (Decree-Law No. 25,475 published on 6 May 1992 and Decree-Law No. 25,659 published on 13 August 1992) stipulates that the maximum penalty for acts of terrorism shall be life imprisonment. Both Decrees came into effect before the entry into force of the present Constitution and have not to date been modified. Therefore, in pursuance of the principle of the rule of law, there is in fact no capital punishment in Peru.

68. By the same token, sentences for acts of terrorism or treason are handed down in compliance with the legal principle established in article 2, in the Preliminary Title of the Penal Code ("No one shall be punished for an act which was not characterized as a crime by the legislation in force at the time

it was committed, or be subjected to a penalty or security measure not established by the law"). Here again, the principle applied is that of the penalty most favourable to the accused.

69. With regard to article 6 (3) of the Covenant, which refers to the crime of genocide, Act No. 26,926, which entered into force on 21 February 1998, amended various articles of the 1991 Penal Code and supplemented it with Title XIV-A on crimes against humanity, article 319 of which reads:

> "A custodial sentence shall be imposed on any person over the age of 20 who, with intent to destroy totally or partially a national, ethnic, social or religious group, perpetrates any of the following acts:
>
> (1) Kills members of the group;
>
> (2) Seriously harms the physical or mental integrity of members of the group;
>
> (3) Subjects the group to living conditions which will inevitably lead to its total or partial physical destruction;
>
> (4) Takes measures intended to prevent births within the group;
>
> (5) Forcibly transfers children to another group."

70. The incorporation of the crime of genocide into the Penal Code is renewed affirmation of the State's political will to ensure unlimited respect for human rights and to comply with the undertakings made to the United Nations.

71. Article 6 (4) of the Covenant provides that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. This paragraph is not in practice applied in Peru for the reasons outlined in respect of article 6 (2).

72. In accordance with the provisions of article 6 (5), Peruvian legislation does not authorize capital punishment for crimes committed by persons under 18 years of age or pregnant women. Article 20 of the Penal Code stipulates: "The following are exempt from criminal responsibility: ... (2) Persons under 18 years of age." This provision must be interpreted to mean that if someone who is under 18 years of age is exempt from criminal responsibility, then he cannot undergo the death penalty.

Article 7

73. Peruvian legislation complies with the provisions of article 7 that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and that no one shall be subjected without his free consent to medical or scientific experimentation. Article 2 of the 1993 Constitution therefore stipulates:

"Every person has the right:

(1) To life, an identity, moral, mental and physical integrity, and free development and well-being. The unborn child is regarded as a subject of law in all matters favourable to it.

...

(24) To personal freedom and security. Consequently:

...

(h) No one shall be subjected to moral, mental or physical violence or to torture or cruel or humiliating treatment. Anyone may request an immediate medical examination of the person who has been injured or is unable himself to have recourse to authority. Statements obtained by violence are not valid. Anyone who employs violence shall incur responsibility."

74. Article 128 of the Penal Code (Legislative Decree No. 635) stipulates that "Anyone endangering the life or health of a person under his authority, orders, guardianship, curatorship or legal supervision by depriving him of the necessary food or care, or by compelling him to perform hard or inappropriate labour, or by having abusive recourse to corrective or disciplinary measures, shall be liable to between one and four years' imprisonment".

75. The Penal Code also contains the following provisions:

Article 151: "Anyone who, by means of threats or violence, obliges another person to do something that the law does not require or prevents him from doing something that the law does not prohibit shall be liable to up to two years' imprisonment".

Article 152: "Anyone who unlawfully deprives another person of their personal liberty shall be liable to 10 to 15 years' imprisonment.

The penalty shall be 20 to 25 years when:

(1) The agent abuses, corrupts, treats with cruelty or endangers the life or health of the injured party;

...

(8) The act is carried out to oblige the injured party to join a criminal organization, or to oblige him or a third party to lend the organization financial or any other form of assistance;

...

(10) The agent has been sentenced for terrorism. The penalty shall be life imprisonment if the injured party has suffered serious

bodily harm or his physical or mental health has been seriously harmed, or if he died while being abducted or as a result of the act in question".

Article 153: "Anyone who holds or transfers from one place to another a minor or a person incapable of defending himself, by means of violence, threats, trickery or other fraudulent act for the purpose of obtaining a financial advantage or exploiting the victim socially or financially shall be liable to 4 to 10 years' imprisonment, and shall be disqualified in accordance with article 36, paragraphs 1, 2, 4 and 5".

Article 153 (a): "Any public official or director of a private entity who is specifically or generally in contact with minors or disabled persons and who abuses his position to hold them or arbitrarily transfer them from one place to another shall be liable to 5 to 12 years' imprisonment and shall be disqualified in accordance with article 36, paragraphs 1, 2, 4 and 5".

76. Article 195 of the Code of Criminal Procedure (Legislative Decree No. 638) stipulates: "To have probative value, any item of evidence must have been obtained by means of a legitimate procedure forming part of due process".

77. The Preliminary Title (art. 3) of the Code of Penal Enforcement (Legislative Decree No. 654) stipulates: "Penal decisions and custodial sentences shall be enforced without recourse to torture or inhuman or humiliating treatment or to any other act or procedure representing an infringement of the prisoner's dignity". Article 14 provides: "The prisoner shall have the right to lodge complaints and to petition the prison governor. If he meets with no response, he may have recourse, by any means, to a representative of the Public Prosecutor's Office".

78. Article 4 of the Code on Children and Adolescents (Decree-Law No. 26,102) reads: "Every child and adolescent has the right to respect for his personal integrity. He may not be subjected to torture, or to cruel or degrading treatment. Hard labour, economic exploitation, child prostitution, and the trade and sale of, and trafficking in, children and adolescents are considered to be forms of slavery".

79. Peru has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, thereby undertaking to adopt legislative, administrative, judicial or any other effective means to prevent acts of torture on its territory. On 21 February 1998 it therefore brought into force Act No. 26,926, amending various articles of the Penal Code and incorporating Title XIV-A. The latter refers to crimes against humanity and includes article 321, which defines torture as a criminal offence and stipulates:

"Any civil servant or public official or any person who, with the consent or acquiescence of the former, inflicts physical or mental pain or serious suffering on others, even if not causing physical pain or psychological affliction, for the purpose of obtaining from the victim or a third party a confession or information, or punishing that person

for any act he has committed or is suspected of having committed, or intimidating or coercing him, shall be liable to 5 to 10 years' imprisonment.

"If the torture causes the death of the victim or results in serious injury, and the agent could have foreseen that result, the penalty shall be 8 to 20 years' and 6 to 12 years' imprisonment respectively."

80. By adopting this measure, Peru provided for the systematic and adequate treatment of acts of torture under criminal law. The judiciary can therefore administer justice appropriately, applying in such cases not the penalties laid down for other crimes such as murder or assault and battery, but those laid down specifically for torture. Although torture was formerly not defined in Peruvian criminal legislation, it was nevertheless harshly punished through the imposition of the penalties established for related offences.

81. At the same time, the crime of forced disappearance is defined in article 320 of the Penal Code, which stipulates: "Any civil servant or public official who deprives a person of his liberty by ordering or carrying out an act the result of which is that person's duly proven disappearance, shall be liable to no less than 15 years' imprisonment and disqualification, in accordance with the provisions of article 36 (1) and (2) of the substantive rule referred to".

Article 8

82. Article 2 (24) (b) of the Constitution provides that "Every person has the right to personal freedom and security. Consequently, ... no form of restriction is permitted on personal liberty, except in the cases laid down by law. Slavery, servitude and trafficking of any kind in human beings are prohibited".

83. The enjoyment of personal freedom is a fundamental right laid down in the Constitution. Slavery is prohibited because it is considered a loss of freedom to be in the power of another human being. Servitude is prohibited because everyone is entitled to complete legal freedom in respect of his person, a human right related to many others, principally the right to work and to freedom of movement.

84. The Constitution also prohibits trafficking in human beings. Trafficking is obtaining a profit from the exploitation of human beings. The main forms of trafficking have historically been the sale of slaves and the prostitution of persons who offer to breed them, care for them or make them work. The prohibition of trafficking implies that no one may profit from the transfer of another human being or from the exploitation of his body or his work.

85. Article 152 of the 1991 Penal Code reads: "Anyone who unlawfully deprives another person of his or her personal liberty shall be liable to two to four years' imprisonment". Article 182 of the Code further specifies: "Anyone who instigates or facilitates the entry into or departure from the

country or the movement within the territory of the Republic of any person for the purpose of prostitution shall be liable to 5 to 10 years' imprisonment".

86. There are many international instruments prohibiting these practices. The first to be officially recognized by the United Nations was the Slavery Convention adopted by the League of Nations in Geneva on 25 September 1926. It had been preceded by the 1889-1890 Brussels Conference, initially held to put an end to the trade in African slaves. The 1926 Convention contained specific definitions of slavery and the slave trade:

> "Article 1.1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.
>
> "Article 1.2. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves."

87. A number of other instruments were subsequently approved, among them: the 1953 Protocol amending the Slavery Convention, approved by General Assembly resolution 794 (VIII); the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted in Geneva on 30 April 1956; the Abolition of Forced Labour Convention, adopted by ILO on 25 June 1957; and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted by General Assembly resolution 317 (IV) of 2 December 1949.

Article 9

88. Article 2 (24) (f) of the Constitution stipulates that every person has the right to liberty and security of person. Consequently, no one may be arrested except on the basis of a written and reasoned warrant from a judge or by the police if caught flagrante delicto. The person arrested must be brought before the appropriate court within 24 hours or the relevant time limit. These time limits do not apply to cases of terrorism, espionage and illicit traffic in drugs. In such cases, the police may place a person presumed to be guilty under pre-trial arrest for a period not longer than 15 days. They must inform the Public Prosecutor's Office and the judge, who may assume jurisdiction before that time has elapsed.

89. The Constitution provides that a suspect may be held in police custody for no longer than 15 days, but this does not mean that detainees are deprived of a proper defence. The Public Prosecutor's Office plays an active role in that its representative, the prosecutor, not only visits detention centres and ensures that a defence counsel is appointed for detainees, but also ensures that the police investigation does not exceed the limits imposed by the law. The Public Prosecutor's Office and the judge are informed whenever anyone is taken into custody, and it is from that moment on that the prosecutors do their job of supervision and monitoring.

90. Article 2 (24) (g) of the Constitution reads: "No one may be held incommunicado except when so required for the purposes of the investigation and in the form and for the period established by the law". The authorities are criminally liable if they do not report forthwith and in writing the whereabouts of the arrested person. The police have been given this power because of the enormous difficulties they have encountered when dealing with phenomena such as drug trafficking and terrorism, where suspected criminals unscrupulously exploited the principle of equality before the law.

91. In Act No. 26,295 of 7 February 1994, Congress created the National Register of Detainees and Persons under Custodial Sentence (RENADESSPLE), at the same time appointing the Coordinating Commission of the National Register of Detainees, the Chairman of which is the representative of the Ombudsman.

92. The Register is basically intended to serve as a support mechanism for the defence of human rights in the administration of justice in Peru. It aims to ensure that police investigations carried out in connection with persons being held for suspected terrorist acts or breaches of national security are transparent. The public register thus established should, initially, make it possible to obtain information in a rapid and timely manner on arrests made by law enforcement personnel anywhere in the country, with information on arrests made in connection with other unlawful acts to be incorporated subsequently.

93. In pursuance of a letter of understanding, the Peruvian National Police have equipped with computers the National Human Rights Commission of the Interior Sector, the Directorate of National Pacification and Defence of Human Rights at the PNP headquarters, the National Directorate against Terrorism, the first, second, third, fourth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth National Police regions, the police fronts of San Martín and Huamanga, and the departmental headquarters of Cajamarca and Huánuco. The aim was basically to cover the zones under a state of emergency and those in which acts of terrorism were more frequent.

94. The procedure is that within 24 hours of the arrest, the police headquarters for the area in which the arrest was made and which is equipped with a National Register of Detainees computer terminal is informed accordingly. The information is then transmitted via modem to the central unit at the Ministry of the Interior and is subsequently consolidated and retransmitted to the Public Prosecutor's Office, where it is stored, followed up and made available to the public.

95. The information provided by the National Police and subsequently received by the Public Prosecutor's Office constitutes the data bank on the situation of detainees in Peru with regard to acts of terrorism or treason and breaches of State security and national defence. Starting on 10 February 1994, the Public Prosecutor's Office decentralized its RENADESSPLE offices, facilitating access to the information on file by the public, lawyers, non-governmental organizations and international bodies, and in response to requests by various national sectors and services.

96. The RENADESSPLE is in an initial phase and only contains information on arrests for acts of terrorism or treason, and breaches of State security and national defence. Plans for the subsequent phases comprise:

(a) The incorporation of information on arrests for other criminal offences;

(b) The participation of the judiciary and the justice sector, through the National Penitentiary Institute (INPE), as sources of information so as to ensure complete follow-up from the moment a person is arrested until his legal situation has been fully resolved.

97. Between 23 March 1993, the day on which the first 10 computers became operational in different police headquarters across the country, and 21 July 1997, the day on which there were 16 computers, the National Police provided information on the arrest of 12,079 persons involved in acts of terrorism or treason, of whom 8,235 were reported to the respective judicial authorities and 3,797 were released for lack of evidence. There are therefore at present 47 persons under investigation in accordance with the law.

Article 10

98. Article 1 of the Constitution stipulates: "The protection of the human person and respect for his dignity are the supreme goal of society and of the State".

99. In connection with article 10 (2), article 11 of the Code of Penal Enforcement provides: "Prisoners shall be segregated according to the following basic criteria: (1) Men from women; (2) Unconvicted from convicted prisoners; (3) First offenders from those who are not; (4) Minors under the age of 21 from adults; (5) Others as determined by the regulations". Article 95 of the Code divides prison establishments into facilities for those awaiting trial, for convicted prisoners, for women and special facilities.

100. Prisoners awaiting trial are not separated from convicted prisoners on the basis of any kind of socio-economic criteria. Prisoners have the right to an environment appropriate for institutional treatment on the basis of article 139 (21) of the Constitution, which gives as one of the principles and rights of the judicial function the right of unconvicted and convicted prisoners to be held in adequate facilities.

101. Facilities for unconvicted prisoners are thus intended for the detention and custody of persons under investigation or currently on trial. They comprise observation and classification centres. Correctional facilities for convicted prisoners are intended for those under custodial sentences and may be "closed", "semi-open" or "open".

102. "Closed" facilities may be either ordinary or special. In ordinary "closed" facilities, communal activities and relations with the outside are strictly controlled and limited. Special facilities are used to hold sentenced prisoners considered difficult to rehabilitate and, exceptionally and in separate premises, detainees awaiting trial and also considered difficult to rehabilitate. In the latter case, the authority with jurisdiction is informed. "Semi-open" facilities are characterized by greater freedom for communal activities, family relationships, and social and leisure

activities. "Open" facilities are those with no guards, in which the prisoner lives in conditions similar to those outside prison, without prejudice to evaluation of his conduct.

103. In this connection, Supreme Decree No. 003-97-JUS of 2 June 1997 amended the regulations on the living conditions and progressive treatment of prisoners who are difficult to rehabilitate, both those awaiting trial and those sentenced for ordinary offences at the national level, re-establishing family visits for prisoners charged with acts of terrorism.

104. Similarly, the regulations on the living conditions and progressive treatment of prisoners awaiting trial and/or sentenced for acts of terrorism and/or treason were approved in Supreme Decree No. 005-97-JUS. The regulations brought about humanitarian improvements in progressive treatment, in compliance with the recommendations made by the United Nations in the Standard Minimum Rules for the Treatment of Prisoners in terms of separation of categories, prisoners' accommodation, family visits, conjugal visits, rewards and incentives for prisoners, and treatment within the framework established for ordinary offences. Lastly, the regulations pave the way for the gradual transition from the closed cell system to a progressive system under the terms of the Code of Penal Enforcement.

105. Vocational, educational and social-welfare programmes have been set up for prisoners, and post-correctional assistance provided for released prisoners. In terms of work, factory modules have been set up consisting of pilot weaving and tailoring workshops for the mass production of clothes. Each workshop has been equipped with looms, sewing machines and an industrial linking machine. The programme was launched in Chiclayo, Cuzco, Huancayo and Cajamarca prisons, and was supplemented with beginners' and advanced training courses.

106. On the health front, a surgical medical centre was set up in Castro Castro prison, and clinics were opened in Chincha, Huacho, Callao and Ica prisons.

107. Within the framework of the plan to reintegrate prisoners in society, students between the ages of 14 and 18 continued to visit prisons, listening while prisoners told their life stories, explained why and when they had turned to crime, expressed regret for their actions and gave advice to the students.

108. The first phase of the plan was carried out as a pilot project last year and reached 12,000 students, who visited prisoners in three prisons in Lima (Chorrillos, San Jorge and Lurigancho). An estimated 100 secondary schools, 29 of which are located in Lima, will participate in the second phase. The students will visit prisoners in Quencoro (Cuzco); Socabaya (Arequipa), Picsi (Chiclayo), Huamancaca (Huancayo), Pucallpa, Iquitos, Lurigancho, Chorrillos and first-offender prisons in Lima and Callao.

109. Booklets have been prepared on the supervision of human rights of prisoners and on homonymy, in coordination with the Ombudsman's Office. Both form part of the new prison policy based on respect for the rights of interdicted persons, and are a means of ensuring respect for detainees' human

rights through adequate conditions of imprisonment. A text will shortly be published on the rights of detainees with the aim not only of providing information but also of promoting their rehabilitation and reintegration.

110. Furthermore, with the support of the United Nations Programme for Development, an integrated prisoner registration system is being set up for the identification and classification of detainees and the collation of their judicial and criminal records, with a view to facilitating more appropriate follow-up to the rehabilitation process. The project has acquired 33 mobile units, 19 from the Peruvian National Urban Transport Company and 20 allocated by the National Customs Authority. The units have been assigned to prisons in the provinces for the transfer of prisoners as part of the process of humanizing and modernizing the treatment of prisoners.

111. Inter-agency cooperation agreements have been signed on the treatment of prisoners and institutional reorganization with the following institutions: the Latin American Foundation of Ontario, Canada, for the purpose of promoting and improving the treatment of prisoners through donations of medical equipment and medicines to the various prisons; the Ombudsman's Office, for the purpose of enabling the National Penitentiary Institute more effectively to fulfil its duties relating to nationwide supervision of prisons and respect for detainees' rights; the judiciary, to organize and provide work for serving and released prisoners on infrastructure projects within the judiciary's investment projects; the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, for the purpose of developing the various methods and procedures for the reorganization of the National Penitentiary Institute; the Office of the Under-Secretary of Justice of the Argentine Republic, on the award of fellowships for the training of personnel from the National Penitentiary Institute, the exchange of technical-professional publications and academic research papers in the fields of criminology, penology and penal enforcement law, within the framework of the United Nations proposal.

112. No genuine prison policy reflecting the humanism embodied in its legislative norms would be complete without a Legal Assistance Office to mitigate the tendency to abuse by the prisoner or the authorities. This Office constitutes the basis for the implementation of extra-penitentiary programmes set up by the State as a means of reducing overcrowding in prisons and enabling the prisoner to be an agent of his own rehabilitation for the benefit of his family and the State.

113. The Office carries out many activities, the most noteworthy and frequent of which are mentioned here. With regard to prison administration, its role is permanently to assess the treatment of prisoners with the aim of securing information on progress or lack of progress made in the rehabilitation of each prisoner and thereby determining the extent of his social reintegration.

114. On the basis of a series of evaluations by the Technical Body on Treatment concerning the degree of rehabilitation shown by a prisoner eligible for sentence remission, the Legal Assistance Office issues a legal report covering the probationary period to which the prisoner is promoted under the Code of Penal Enforcement, the legal framework for this process. In accordance with the regulations on the organization of files submitted to the

Standing Remissions Committee, the Legal Assistance Office, whose duties do not include organizing those files, provides support with regard to form and substance so as to prevent errors of omission that in the final analysis lead to the denial of remissions. The President of the Republic may grant a remission at any time on the recommendation of the Standing Committee.

115. At present, Quencoro prison is exceptional in character in that it has high security areas for prisoners convicted of terrorist acts, a women's block, a block for ordinary offenders, and a rehabilitation centre for minors who, although isolated, are part of the prison population. The Legal Assistance Office provides advisory and defence services, guidance and other forms of support for the entire prison population.

116. Prison security is the role of the National Police, who also sometimes supervise and administer prisons in which INPE staff also work. This has given rise to problems between the two institutions. In addition, security staff have been the object of constant reorganization for the sole purpose of motivating, professionalizing and modernizing them along the lines of private-sector staff. The aim is to promote the reintegration of prisoners in the family and in society, all the more so since the two institutions overlap. For this reason, the Penitentiary School was instructed to teach staff about the ongoing changes and to train them to acquire a spirit of service and to be morally upstanding and highly professional.

117. With regard to the granting of semi-detention, it is no longer necessary to present a work contract or document attesting to employment or enrolment in a school. Permanent coordination is also maintained with the Judiciary's Enforcement Commission with regard to the application of article 137 of the Code of Criminal Procedure, which refers to detention under ordinary and special proceedings. Care is also taken that article 143 of the same Code, on summons, is properly applied.

118. The infrastructure of the prison system has been substantially improved during the last four years. Twenty-one prisons have been rapidly built, with maximum, medium and minimum security wings, individual cells for prisoners charged with terrorism, premises for those held for ordinary offences and offices for judges, public prosecutors and attorneys, among others. Juliaca and Challapalca prisons were finished in 1996. This year two new prisons are being built in Cañete and Tumbes, and others are being improved through 39 upgrading, renovation, refurbishment and modernization projects designed to enhance the living conditions of the prison population.

119. Nationally, the prison population stood at 24,871 in November 1997, a 6.7 per cent increase over the same month in 1996, when there was a total of 23,307 prisoners. Of the 1997 total, 22,870 (91.95 per cent) were men and 2,001 (8.05 per cent) women, meaning that there was 1 woman for every 11 men in Peruvian prisons. Of the same total, 16,906 (67.98 per cent) were awaiting trial and 7,965 (32.02 per cent) had been convicted. The National Institute for Statistics and Information Technology estimated the total population of the country at 30 June 1997 to be 24,371,048, meaning that the 24,871 persons making up the total prison population in November 1997 represented about 0.10 per cent of the national population.

Article 11

120. Article 62 of the Constitution recognizes freedom of contract, under which anyone may enter into a contract if its purpose is licit and it does not contravene the laws of public order.

121. This article protects the freedom of contract and guarantees that the parties may validly enter into agreement according to the regulations in effect at the time of conclusion of the contract.

122. In Peru, no one may be deprived of his freedom of contract because of debt. Indeed, article 2 (24) (c) of the Constitution provides that "There is no imprisonment for debt", but also clearly stipulates that this principle does not apply in the event of failure to pay maintenance.

123. It is a principle of modern law that failure to meet obligations of a civil nature should not be subject to custodial sentences because, unless otherwise established in criminal legislation, failure to meet an obligation is not a crime, and defaulters should therefore not be punished as though it were. As stated above, however, the judge may imprison someone for failure to pay maintenance. This is expressly defined as a criminal offence, because failure to pay maintenance is considered to be reprehensible behaviour not only from the personal and family standpoints, but also from the social standpoint.

124. Maintenance is not just any debt. Quite often the basic rights of a minor or someone who is disabled can only be fulfilled by the payment of at least minimum maintenance, since that payment covers the basic needs of the person concerned.

Article 12

125. According to article 2 (11) of the 1993 Constitution, "Every person has the right to choose his place of residence, to travel within the national territory, and to leave or enter it, subject only to any limitations established by a court order or in accordance with the Aliens Act".

126. This paragraph contains a number of rights, all of them essential to personal liberty, such as a person's right to choose his place of residence, that is, the focus of his daily life and activities. No one can compel another person to live where he does not wish to. Similarly, a person has the right to travel within the territory, that is to say, to journey freely within the country without hindrance and also to stay anywhere he wishes.

127. The right to leave and enter national territory freely is closely related to the right recognized in article 2 (21) of the Constitution, according to which "Every person has the right to a nationality. No one may be deprived of it. Neither may a person be deprived of the right to obtain or renew a passport within or outside the national territory".

128. The exercise of the right to leave the country freely may be limited in two ways:

(a) By restriction or suspension under a state of emergency or siege; or

(b) Through other restrictions that may be imposed for three reasons: for health reasons, i.e. if the health security of the country is affected or endangered (for example, by the risk of a disease or dangerous waste being brought into the country from outside or carried from one part of the territory to another); by court order, i.e. if a judge orders that someone should be prevented from exercising one of these rights; or in pursuance of the Aliens Act, when a person attempts to leave the territory without complying with the regulations, for example without a passport, or has entered or is staying in the territory in breach of the current immigration or visa regulations, in which case he may even be deported.

Article 13

129. According to paragraph 7 of the Title relating to "Types of punishment" in the explanatory introduction to the Penal Code, exile or deportation - depending on whether a person is Peruvian or foreign - is imposed after a custodial sentence has been served (Penal Code, art. 30), the maximum period is 10 years and these penalties are only used in cases of serious crimes.

130. Thus, according to article 303 of the Penal Code, "A foreigner who has served the sentence imposed shall be deported and forbidden to return".

131. According to the section of the Code of Penal Enforcement relating to the enforcement of custodial sentences, the nature of these sentences is such that the prison authorities merely have to hand over a prisoner who has served a prison sentence to the competent authorities for the execution of the sentence of exile (Peruvians) or deportation (foreigners). According to article 118 of the Code, "When a person sentenced to exile or deportation has served his prison term, the prison governor shall hand him over to the competent authorities for the sentence to be carried out".

132. In addition, according to article 11 of the Customs Offences Act (Act No. 26,461), "If a foreigner commits a contraband offence or defrauds the Customs of duty, he shall be additionally sentenced to permanent deportation, this sentence to be executed after the prison sentence has been served".

133. According to article 29 of the Aliens Act (Legislative Decree No. 703), "A foreigner shall be forbidden to enter the country if: (a) he has been deported by court order or in pursuance of the regulations on aliens, provided that no order has been issued by the relevant authorities revoking that decision; or (b) he is a fugitive from justice for offences defined as ordinary offences in Peruvian law.

134. According to article 30 of the Act, the immigration authorities may ban foreigners from entering national territory if: (a) they have been expelled from other countries for ordinary offences defined as such under Peruvian law or for offences against laws relating to aliens that are analogous to Peruvian

laws; (b) the Peruvian health authorities rule that their entry into the country would endanger public health; (c) they have criminal or police records for ordinary offences defined as such under Peruvian law; (d) they lack the financial means to pay their expenses while in Peru; (e) they have been charged abroad with ordinary offences which are defined as such under Peruvian law and carry serious penalties or imprisonment, according to reports received from the competent foreign authorities; (f) they do not comply with the requirements set forth in the regulations relating to the Aliens Act.

135. According to article 62 of the Act, "Foreigners who violate the provisions of this Act shall be liable to the following penalties: ... (d) Deportation". This provision should be read in conjunction with article 64 of the Act, which stipulates: "The sentence of deportation shall be imposed: (1) For clandestine or fraudulent entry into the national territory; (2) By order of the competent judicial authorities; (3) On anyone who has been ordered to leave the country or whose right to remain or reside in the country has been revoked, and has not left the country".

136. Article 65 of the Act states: "An order to leave the country shall be issued by decision of the Directorate-General of Internal Governance, on the recommendation of the Immigration and Naturalization Department; the foreigner shall leave the country within the time limit indicated in the decision". According to article 66, "Revocation of the right to remain or reside in the country and the deportation order shall be issued on the decision of the Ministry of the Interior, following a report by the Aliens Commission on the basis of a police statement issued by the Aliens Division of the National Police".

137. The second transitional provision of the same Act allows illegal immigrants in Peru to apply to the Immigration Department to have their situation regularized for three months. If they are not given such a grace period, they must leave the country.

Article 14

138. The aim of all the provisions of article 14 of the Covenant is to ensure the proper administration of justice and, therefore, to establish a series of personal rights, such as equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. In this regard, article 2 (2) of the Constitution recognizes the right of every person to equality before the law and the right not to be discriminated against on grounds of origin, race, sex, language, religion, opinion, property or any other consideration.

139. Existing substantive laws, such as the Civil Code and the Penal Code, and the respective codes of procedure, give effect to the principle of equality before the law, in accordance with the Constitution, article 2, paragraph 24 (a), (b), (c), (d), (e), (f), (g) and (h), which set forth the constitutional guarantees in Peru's legal system. The highest expression of this system is the right to personal freedom and security. Accordingly, any legal proceedings, in whatever type or area of jurisdiction, must be based on the procedural principles of legality, promptness, concentration, speediness, estoppel, equality of the parties, the right to be heard and procedural

economy, as provided for by the relevant legislation, such as article 6 of the Judiciary (Organization) Act, adopted by Supreme Decree No. 017-93-JUS published on 2 June 1993.

140. According to article 3 of the Constitution, the rights listed in the section on liberty and security of person do not exclude others guaranteed by the Constitution, others of a similar nature, or others founded on human dignity or on the principles of sovereignty of the people, the democratic rule of law and the republican form of government.

141. Article 139 of the Constitution embodies the principles and rights of the judiciary, including the observance of due process and judicial protection, the plurality of instances, indemnification, the right not to be punished without judicial process, the application of the law most favourable to the accused in case of doubt or conflict between criminal laws, and the principle that every person must be informed, immediately and in writing, of the causes of, or reasons for, his or her detention. These principles have also been incorporated into the Judiciary (Organization) Act. The judiciary is currently being reorganized and modernized so that access to the administration of justice can be facilitated by promoting and maintaining appropriate structural and operational conditions.

142. Peru has implemented a reform of the judiciary involving radical changes in the administration of justice and requiring a new dynamic in terms of procedural promptness and economy, the guiding principles underlying the activity of the various judicial bodies.

143. A successful innovation in civil procedure, introduced in response to the lax and dilatory handling of cases and constant allegations of corruption and excessive charges, is the corporate support group. These groups are specialist teams of professionals acting as common agents for all magistrates, using a very advanced computer networking system. Specific tasks are assigned to these teams, with the aim of organizing the caseload, helping to rationalize it and relieve judges of administrative tasks, so as to leave them more time for their real work of administering justice.

144. A proper infrastructure is being built up for the judiciary, using the resources available. In the Lima judicial district, for example, spacious premises have been provided, in line with what is required to handle cases, including a Litigants Office with computer support for obtaining information on the progress of cases, thereby making it possible to assist the parties in dispute more promptly.

145. To the same end, in order to remove the judiciary's enormous backlog of cases, which has always been one of the obstacles to the administration of justice, temporary civil courts were created to help clear up cases initiated under the old Code of Civil Procedure, fully applying the new Code that came into force in April 1993. These temporary courts are now no longer in operation, having done the job they were established to do.

146. One outcome of this, and part of the reform, has been the design of a single code - in effect, a single list of case files in numerical order - which can be used to handle the files. This will in the future make it

possible to deal with them with the same degree of ease at any judicial level, another aim being to separate substantive acts from ordinary administrative acts.

147. The concept of corporatization is spreading through all areas of the administration of justice. For example, in February 1997, by Administrative Decision No. 335-CME-PJ, temporary labour tribunals were established in the Callao High Court of Justice; similarly, a new specialist penal division has been established in the Lima High Court of Justice, with 15 magistrates and supported by a Litigants Office.

148. One concern of the reform is to ensure that the rest of the country also meets the targets. In this connection, it should be noted that the pilot project for what became the new legal office, which sought to present itself as a computerized and rationalized legal support organization, was set up in the Lambayeque judicial district, an important district where the civil courts have successfully been corporatized, illustrating the progress that is being made in decentralizing the reform of the judiciary.

149. Another very important step was the establishment of the decentralized mixed division in Chimbote, whose continuing operation was subsequently approved; it was set up to solve the problems caused in the region by the entire burden of trial proceedings falling on the Ancash High Court.

150. Under the penal reform, the arresting and sentencing courts are now functioning as their name would imply, on the principle of systemization, so that prisoners are tried differently from those summoned to court. Ad hoc criminal divisions have been established for such cases in both the main headquarters of the judiciary and in various prisons.

151. The Peruvian State has recently needed to resort to emergency criminal legislation and the suspension of rights, thereby allowing states of emergency to be declared in order to combat terrorist crime. This has been done on the basis of a legal and institutional structure capable of dealing effectively with terrorism, which had spread throughout the country and was seriously threatening the country's very existence. This legislation included the procedural possibility of concealing the identity of judges, members of the Public Prosecutor's Office and court officers taking part in trials.

152. The institution of "faceless judges" and the use of military courts for offences of treason in the fight against terrorism were two essential aspects of this kind of trial. The reason this was done was that terrorist gangs would identify judges, intimidate them and frequently attempt to murder them; at the same time, the weakness of the judiciary, which was one of the reasons why the reform was necessary, made it possible for the perpetrators of these offences and their accomplices to escape condign punishment.

153. The procedural possibility of concealing identity did not mean that judges, members of the Public Prosecutor's Office and court officers taking part in trials of terrorist offences were not known to the State or the supervisory bodies concerned. Only those on trial were kept unaware of their identity in order to prevent reprisals against their relatives or the authorities.

154. In view of the progress made, the Government, as part of its policy of relaxing anti-terrorist legislation, repealed Acts Nos. 26,447 and 26,537, which had provided for the continued existence of "faceless judges". Later, by means of Act No. 26,671 of 12 October 1996, the Government ensured that, with effect from 15 October 1997, the trial of terrorist offences under Decree-Law No. 25,475 and the appeals procedure in the relevant judicial bodies were carried out by the appropriate judges, in accordance with the procedural and organizational regulations in force, and with judges duly appointed and identified according to the rota system.

155. Similarly, by Administrative Decision No. 510-CME-PJ of 30 October 1997, the permanent criminal division of the Supreme Court was made the executive body in the conduct, supervision and monitoring of trials in criminal proceedings for terrorist offences. Thus, with effect from 15 October 1997, Peru's system of concealing judges' identity, known as "faceless justice", came to an end.

156. In addition, under Act No. 26,872 published on 13 November 1997, the Conciliation Act established "extrajudicial conciliation" as an alternative conflict-resolution mechanism whereby the parties attend a conciliation centre or go to a magistrates' court for help in finding a consensual solution to their conflict (art. 5 of the Act).

157. Article 1 of the Act states that it is in the national interest to institutionalize and develop conciliation as an alternative to the judiciary as a conflict-resolution mechanism. We find that it encourages a culture of peace and is carried out in accordance with the principles of ethics, equity, truthfulness, good faith, confidentiality, impartiality, neutrality, legality, expeditiousness and economy (art. 2 of the Act).

158. According to the definition given in the same Act (art. 3), conciliation is based essentially on free will. It is thus a consensual institution in which the agreements reached are the product solely and exclusively of the wishes of the parties and relate to the actual or potential claims regarding the rights of the parties. In the area of the family, provision has been made for claims with regard to maintenance, visiting rights and domestic violence. Disputes over events involving the commission of offences are not submitted to extrajudicial conciliation, with the exception of disputes over levels of civil damages for offences committed, if these were not set by final court decision. According to article 16 of the Act, extrajudicial conciliation is formalized by a written record, observing all the requirements indicated, on pain of invalidation.

159. The regulations for Act No. 26,872 were approved by Supreme Decree No. 001-98-JUS, published on 14 January 1998, and are now being fully implemented. Great expectations have been aroused by this legislation since, as an alternative means of resolving conflicts, it should help to consolidate social peace, which will serve as the basis for the socio-economic development all Peruvians aspire to, particularly if the fruits of the reform of the judiciary are to be appreciated in the medium and long term.

160. It is therefore possible to say that the minimum guarantees provided for in article 14 of the Covenant are fully applied in Peru's Constitution and in the relevant substantive and procedural legislation, as described.

Article 15

161. Article 15 of the Covenant prohibits the retroactive application of criminal laws, and refers both to the criminalization of particular acts and to the heaviness of the penalty that may be imposed for a criminal offence.

162. Peru fully recognizes the principle of non-retroactivity of criminal laws. Thus, according to article 139 (11) of the Constitution, one of the principles and rights of the judicial function is the applicability of the law most favourable to the accused in cases of doubt or conflict between criminal laws. This is consistent with article 2 (24) (d), which stipulates: "No one may be tried or sentenced for an act or omission which did not explicitly and unequivocally constitute a punishable offence under the law at the time it was committed, or incur a penalty not provided for by law".

163. Specifically, in substantive criminal law, according to articles 6-9 of the Penal Code (Book 1, General Section, Title I, Chapter II), approved by Legislative Decree No. 635 published on 8 April 1991, the criminal law applicable to an offence is that which is in force at the time the offence was committed. In accordance with the principle of benign retroactivity, however, in cases where criminal laws conflict over time, the one most favourable to the accused shall apply.

164. Provision is also made for a situation in which, while a sentence is being served, legislation more favourable to the convicted person is enacted; in this case the court has the power to substitute the appropriate penalty, i.e. the more favourable one. Similarly, provision has been made to annul a sentence and its consequences if, under the new legislation, an action punishable under earlier legislation ceases to be so.

165. Legislation intended to remain in force for a specific period shall be applied in all cases occurring while it was in force, even though it may subsequently cease to have effect, except when otherwise provided for.

166. Lastly, the Penal Code stipulates that the time when an offence was committed is that when the perpetrator or accomplice acted or omitted to act, regardless of the time when the result occurred.

Article 16

167. The intention of this article is to ensure that every person is a subject of law but not an object of the law. In this regard, article 2 of the Constitution stipulates that every person has the right "(1) To life, an identity, moral, spiritual and physical integrity, and free development and well-being". Naturally, the right to an identity goes hand in hand with the right to recognition of the legal personality of every person everywhere, to the extent that that recognition has been duly formalized.

168. Act No. 26,497 establishes the National Resistry of Identity and Civil Status, which, as part of the electoral system, is responsible for organizing and maintaining the Single Register for the Identification of Natural Persons, and recording events and acts relating to their capacity and civil status, i.e. births, marriages, deaths, divorces, and other acts that alter an individual's civil status, relevant judicial or administrative decisions which need to be recorded and any other acts stipulated by law. The Single Register is currently being introduced throughout the country, thereby ensuring observance of all persons' right to an identity.

169. Article 1 of the 1984 Civil Code stipulates that the human person is a subject of law from birth, and that human life begins at conception. It provides that an unborn child is a subject of law in all matters favourable to it, while inheritance rights are dependent on the child being born alive. It should be emphasized that these ideas conform to the most recent thinking and are being accepted by most legislatures in the international community. In addition, according to article 3 of the Civil Code, every person enjoys civil rights, except in the cases stipulated by law. Men and women have an equal right to enjoy and exercise civil rights (art. 4), and recognition is given to every person's right and duty to bear a name, including a surname, by means of which he can establish his identity (art. 19).

Article 17

170. Article 17 of the Covenant provides for the right of everyone to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence, or unlawful attacks on his honour and reputation. For these reasons, this right must be safeguarded from all such interference or attacks by State authorities or by natural or legal persons.

171. Article 2 (7) of the Constitution stipulates that everyone has the right to honour and a good reputation, to personal and family privacy, and to express and represent himself as he sees fit. It also provides that anyone affected by inaccurate or damaging statements in any of the mass media has the right to immediate rectification free of charge in proportion to the offence caused, without prejudice to any liability under the law.

172. The right to personal and family privacy, to protection of one's opinions and image, and to the inviolability of correspondence, communications and recordings when they are confidential or refer to private aspects of one's life is safeguarded by articles 14, 15 and 16 of the Civil Code. The injured party or parties have the right to demand the cessation of the harmful acts. The liability of the perpetrator or perpetrators of the aggression is joint and several.

173. As a practical expression of the above-mentioned article of the Constitution, in keeping with the provisions of the Civil Code, mention should be made of Act No. 26,775, which lays down the right of rectification enjoyed by persons affected by inaccurate statements in the media. The Act was published in the official bulletin El Peruano on 18 April 1997. The exercise of this right places no restriction on the filing of an application for amparo.

Article 18

174. Article 18 of the Covenant, which protects freedom of thought, conscience and religion, has two aspects:

(a) It protects the freedom to have a religion; and

(b) It protects the freedom to manifest this religion or belief, in public or in private, individually or in community with others, and to observe or refrain from observing certain practices.

175. Both aspects are guaranteed in our Constitution, which stipulates in article 2 (3) that every person has the right to freedom of conscience and religion, individually and collectively. There is no persecution on the grounds of ideas or beliefs. There are no crimes of opinion. The public practice of all faiths is open to all, provided that they do not offend against morals or disturb public order.

176. The free conduct of the activities of all religious faiths is a daily practice in Peru. Some churches, such as the Roman Catholic and Evangelical churches, engage in mutual collaboration with the State. As regards education, Peru has a consortium of Catholic schools which are widely supported by the educational authorities.

Article 19

177. Like article 18 on freedom of religion and belief, this article has two aspects:

(a) It guarantees an absolute right, namely, everyone's right to hold opinions without interference;

(b) It protects the right of freedom of expression, which may be subject to certain restrictions provided for by law, as mentioned in article 19 itself.

178. Our Constitution clearly states that there is no crime of opinion (art. 2 (3)), while in article 2 (4) it stipulates that everyone has the right to freedom of information, opinion, expression and dissemination of ideas orally, in written form or through images, in any of the media, without prior authorization or any form of censorship or restraint, violations being punishable by law. This should be viewed in connection with the comments on article 17 of the Covenant relating to the right of rectification enjoyed by persons affected by inaccurate statements in the media, as protected by Act No. 26,775.

179. Recently, on 12 March 1998, Congress enacted a bill confirming and guaranteeing the full validity of the right to free expression of thought and the unrestricted practice of journalism without mandatory membership of the press corps. The new law states that article 2 (4) of the Constitution guarantees freedom of expression in Peru and its free exercise by everyone. It stipulates that the right of membership of the press corps laid down in

Act No. 23,221 is exclusively reserved for professionally qualified journalists, for the trade-union and vocational purposes and benefits inherent in the profession.

Article 20

180. Our legislation contains no provision constituting propaganda for war, advocating national, racial or religious hatred, or constituting incitement to discrimination, hostility or violence.

181. According to article 2 (22) of the Constitution, everyone has the right to peace, tranquillity, leisure time and rest, and to enjoy an appropriate and harmonious environment for living his life. These rights have been seriously jeopardized by insane acts of terrorism in our country and by their sequel of hatred and violence.

Article 21

182. Article 21 recognizes the right of peaceful assembly, in private or in public, for political or other purposes.

183. We should point out that article 2 (12) of the Constitution fully recognizes the right of everyone to assemble peacefully without weapons. Meetings in premises which are private or open to the public do not require prior notice. Meetings convened in public places and in the street do require prior notification of the authorities, who may ban them only on proven grounds of public health or security. In some isolated cases in areas which have been declared to be under a state of emergency some restrictions are imposed on this right, mainly for security reasons.

184. In relation to article 21, account should be taken of our comments and details concerning article 19, given that public demonstrations may be a means of expressing political or other opinions. The right protected in article 21 is also linked to the right of freedom of expression as protected in article 19. As far as public demonstrations are concerned, therefore, there are no restrictions other than those imposed in areas declared to be under a state of emergency as a result of terrorist activity.

Article 22

185. Article 22 guarantees the right of everyone to freedom of association with others for political or other purposes. This article thus sanctions a right which to some extent supplements the right of peaceful assembly recognized in article 21. Any restrictions on exercise of the right to freedom of association must therefore conform to the same conditions as restrictions which may be placed on the right of peaceful assembly. The restrictions must be provided for by the law, since they are necessary to protect public interests in a democratic society.

186. In our country, the right to freedom of association has full force and no restrictions exist in the labour, entrepreneurial, social context, etc., as the Constitution stipulates in article 2 (13), which reads: "Every person has the right of association and the right to establish foundations and various

forms of non-profit-making legal organizations, without prior authorization, in accordance with the law. They may not be dissolved by administrative decision."

187. In the opinion of the experts, as a result of the new General Commercial Companies Act (No. 26,887) which has been in force since 1 January 1998, a company constituted in accordance with this legislation, and in particular a limited liability company, does not necessarily have profit-making as its primary purpose. In accordance with article 1 of the Act, the persons setting up the company may agree to contribute goods or services for the joint practice of economic activities, limiting them to those lawful transactions or operations which are spelled out as constituting the company's objects.

188. This wording differs from that contained in the earlier Act No. 16,123, which stressed the company aim of profit distribution. Where this article of the Covenant is concerned, therefore, we consider it important to emphasize the contents of this legal instrument which is aimed at the promotion of entrepreneurial activity after three decades of existence of Act No. 16,123. This fully justified the incorporation of new legal provisions in the commercial and entrepreneurial sector.

189. This type of company can therefore be considered in the context of the implementation of article 22 of the Covenant.

Article 23

190. Our legislation, as contained in articles 233 et seq. of the 1984 Civil Code, provides for adequate State protection and support for the family, with the aim of contributing to its consolidation and reinforcement, in accordance with the principles and norms set out in the Constitution.

191. According to article 234 of the Civil Code, marriage is the voluntary union of a man and a woman who are legally competent to enter into it, solemnized in accordance with the provisions of the Civil Code, for the purpose of cohabitation. In the home, husband and wife have equal authority, respect, rights, duties and responsibilities.

192. Article 42 of the Civil Code states that persons who have reached 18 years of age have full competence to exercise their civil rights, with the exceptions listed in articles 43 and 44 concerning absolute legal disability (young persons under 16, except for those acts determined by law) and relative legal disability (persons over 16 and under 18 years of age).

193. Article 241 (1) of the Civil Code prohibits the marriage of persons who have not reached the age of puberty. However, the judge may overrule this impediment when serious grounds exist, provided that the man has reached the age of 16 years and the woman 14. This exception exists since in certain cases it is possible that the man or the woman may meet the requirements of physical, mental and economic competence before reaching the legal age of puberty, or serious circumstances may make necessary the marriage of persons who have not yet reached that age. The Code permits the flexible application of the general rule in a number of cases. First, the judge may waive this requirement when serious grounds exist and the man has reached 16 years of

age and the woman 14. Compared with article 87 of the 1936 Civil Code, the age has been reduced by two years for both men and women, since it was previously 18 for the man and 16 for the woman. Secondly, a marriage entered into by a person who has not reached the age of puberty is considered to be automatically valid if its annulment has not been requested by the day following that on which that person comes of age. If it is annulled at the behest of a third party, the spouses may confirm it retroactively when they come of age. The fact of not being of age may not be adduced as a reason for the invalidity of the marriage if the woman has conceived. These points are set out in article 277 (1) of the current Civil Code.

194. In this connection, article 46 of the Civil Code states that the disability of persons over 16 years of age is suspended on marriage or when they obtain an official qualification enabling them to practise a profession or trade. In the case of women over 14 years of age, disability is also suspended on marriage. The competence acquired through marriage is not lost when the marriage is terminated.

195. In accordance with article 393 of the Code, any person (man or woman) who is not considered as subject to any legal disability (persons without due discernment, deaf mutes, persons mentally incapacitated or suffering from mental impairment, etc.) and is at least 16 years of age may recognize a child born out of wedlock. This is in keeping with article 388 of the Civil Code, which provides that a child born out of wedlock may be recognized by both father and mother or only by one of them. Article 393 of the Civil Code states: "Any person not subject to the disabilities listed in article 389, who is at least 16 years of age, may recognize a child born out of wedlock."

196. Our legislation does not permit a mother under 16 years of age to recognize a child born out of wedlock since she would be totally incompetent to perform legal acts. In such a situation, in accordance with article 389 mentioned above, the child born out of wedlock may be recognized by the respective grandfather or grandmother; this is also possible in the event of the death of the father or mother. It should be noted that our legal system does not allow a person under 16 years of age to recognize a child born out of wedlock. Men are not excepted and women are not discriminated against; this legal restriction affects both sexes equally.

197. However, in response to the concerns of the international organizations, the possibility is being studied of introducing into our legislation a provision whereby a teenage mother under 16 may register her child's birth and recognize the child, thus acquiring relative civil competence which would enable her, if her case required, to claim maintenance for the child and for herself as the mother.

198. This is regarded as one of the priorities of the legislative agenda prepared by the Congressional Commission on Women for the next session. The proposal aims at introducing a means of protecting teenage mothers. This need is a pressing one, which is why a provision is being framed, to specify the appropriate machinery for dealing with these very human situations, which mainly affect teenagers with limited resources.

Article 24

199. With the promulgation in 1962 of the Code on Children and Adolescents, enacted by Decree-Law No. 26,102, the principle of the best interests of children and adolescents was fully incorporated into our positive law, along with the principle of comprehensive care for them in accordance with the Declaration of the Rights of the Child and the Convention on the Rights of the Child. The Code thus includes provisions which guarantee their right not to be subjected to any discrimination on grounds of colour, sex, language, religion, national or social origin, property or birth, nor to be ill-treated in any way. The irregular situation principle which underlay the Minors' Code of 1962, now repealed, has been superseded.

200. Legislation has been promulgated concerning the registration of births after the expiry of the normal registration period (30 days). This may be done at the place of birth or residence, as provided for in Act No. 26,497, the National Identification and Civil Status Register (Organization) Act, which is consistent with the Code on Children and Adolescents. Registration in a registry office guarantees access to the right to a name, and hence to a nationality.

201. The Code on Children and Adolescents makes provision for the case of young offenders, the administration of justice in such cases having been made the responsibility of family courts. This has been included in the programme of reform of the judiciary with reference to specialized justice for dealing with children and adolescents.

202. The above-mentioned Code has paved the way for the setting-up of offices of the Ombudsman for children and adolescents, known as Municipal Offices of the Ombudsman for Children and Adolescents (DEMUNAS). Currently, DEMUNAS are in operation in 128 provincial municipalities and 300 districts in the areas with the highest population density. These services form a national system under the Ministry for the Advancement of Women and Human Development, and seek to protect children from any form of ill-treatment and danger by promoting and safeguarding the rights of children and young persons.

Article 25

203. Article 25 refers to the political rights of citizens and lays down the principle that such rights shall be guaranteed without undue restrictions and with none of the distinctions mentioned in article 2.

204. According to article 2 (17) of the Constitution, every person has the right to participate, individually or collectively, in the political, economic, social and cultural life of the nation. According to the law, citizens have the right to elect, remove or recall their public authorities, the right of legislative initiative and the right of referendum.

205. Mention should also be made of the right of citizens to elect and to be elected, and thus to take an active part in public affairs, according to article 31 of the Constitution, which should read in conjunction with

article 35. The latter article stipulates that citizens may exercise their rights individually or through political organizations such as parties, movements or alliances, according to the law.

206. The registration of parties, movements or alliances in the relevant register gives them legal capacity, the aim being to ensure that they function in a democratic manner, which is not always the case. Many of them are headed by permanent caucuses who do not allow any new leaders to come through and restrict or nullify the participation of those they represent.

207. An appropriate legal framework should contribute to the control of the sources of financing of political parties so as to prevent acts of corruption, such as have been observed in some countries.

208. Between September 1995 and October 1997, 13 versions of the Political Parties Bill were submitted to Congress. Five of these are with the Congressional Commission on the Constitution, following the adoption of two proposals concerning requirements for the registration of political parties and the functions of the National Office of Electoral Proceedings, contained in the Organization of Elections Act (No. 26,859).

Article 26

209. Article 26 establishes an autonomous right which may also be applied to areas which the Covenant does not deal with directly. It contains the principle of non-discrimination, which means that not only is it related to article 16 but it applies generally to the non-discriminatory clauses to be found in other articles of the Covenant.

210. Article 2 (2) of the Constitution provides that all persons have the right to equality before the law and that no one may be discriminated against on grounds of origin, race, religion, opinion, property or any other consideration.

211. Article 10 of the current Penal Code, with reference to the application of the law to individuals, states that it applies equally to all. The prerogatives granted to certain persons because of their duties or posts must be specifically provided for in international law or treaties.

212. Similarly, labour laws recognize the right of every person not to be subjected to discrimination as regards access to a post, whether in the private sector, basically governed by Legislative Decree No. 728, or in the public sector, governed by Legislative Decree No. 276 and its regulations, as adopted by Supreme Decree No. 005-90-PCM.

Article 27

213. Article 27 establishes the right of members of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion, and to use their own language.

214. Freedom of conscience or religion, whether individual or collective, is governed by article 2 (3) of the Constitution. There is no persecution on grounds of ideas or beliefs. There is no crime of opinion. The public practice of all faiths is open to all, provided that they do not offend against morals or disturb public order. This was also mentioned in relation to article 18 of the Covenant.

215. Article 2 (19) of the Constitution also recognizes the right of every person to his or her ethnic and cultural identity. The State recognizes and protects the ethnic and cultural diversity of the nation.

216. Every Peruvian has the right to use his own language before any authority through an interpreter. Foreigners have the same right when they are summoned before any authority.